

## Message Text

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ACTION L-03

INFO OCT-01 ARA-16 ISO-00 SCA-01 JUSE-00 CIAE-00 DODE-00

PM-07 H-03 INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01

SPC-03 SS-20 USIA-15 SEC-03 DRC-01 /096 W

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R 292355Z MAR 74

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 6640

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 1246

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: FRANCISCO CASTILLO ATTACKS "VESCO LAW"

1. RESPECTED PENAL LAWYER FRANCISCO CASTILLO RESPONDED ON MARCH 29 TO A REQUEST FROM THE NEWSPAPER "LA REPUBLICA" FOR HIS ANALYSIS OF THE NEW EXTRADITION LAW, , BY SHARPLY CRITICIZING THE LAW'S SUBSTANCE, ITS MOTIVES, AND ITS BACKERS. CASTILLO'S ANALYSIS, ALONG WITH LAW SCHOOL DEAN WALTER ANTILLON'S PUBLISHED EARLIER THIS WEEK (POUCHED), IS A MAJOR DEVELOPMENT IN CONTINUING PUBLIC AND LEGAL CIRCLE RESENTMENT OVER LAW. ON MARCH 29, 300-500 HIGH SCHOOL CHILDREN DEMONSTRATED AGAINST THE LAW BEFORE THE CASA PRESIDENCIAL, THEN MARCHED INTO THE CENTER OF SAN JOSE WHERE THEY BLOCKED TRAFFIC FOR MORE THAN TWO HOURS. SPEECHES AND CHANTING CALLED FOR REPUDIATION OF VESCO LAW AND VESCO'S EXPULSION FROM COSTA RICA.

THE FOLLOWING IS A FREE TRANSLATION OF CASTILLO'S ARTICLE AS PRINTED IN "LA REPUBLICA."

2. (BEGIN UNCLASSIFIED) BEGIN QUOTE REFORMS TO THE LAW #4795 OF JULY 16, 1971 (EXTRADITION LAW), HAVE THE IMMEDIATE CONSEQUENCE OF IMPENDING THE POSSIBLE EXTRADITION OF ROBERT VESCO. ONE CANNOT THOROUGHLY UNDERSTAND THESE (REFORMS) WITHOUT CONSIDERING THE EXTRADITION REQUEST THAT WAS BROUGHT AGAINST VESCO A SHORT TIME AGO BY THE AMERICAN EMBASSY, AND THE JURISPRUDENCE THAT WAS SET

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FORTH BY THE SECOND APPEALS COURT ON THAT OCCASION.

THAT JURISPRUDENCE CAN, IN CASE OF A NEW EXTRADITION REQUEST, CAUSE PROBLEMS FOR THE FAMOUS FUGITIVE. FOR THAT REASON HE, HIS ADVISORS, AND HIS POLITICAL FRIENDS DECIDED TO ELIMINATE ANY RISK, THROUGH THE CREATION OF A NEW LAW.

3. BY ITS PERSONAL AND LEGAL CHARACTER, THIS REFORM OF THE EXTRADITION LAW STRIKES A BLOW AT THE INSTITUTIONALITY OF THE COUNTRY AND TO THE CONCEPT OF LAW WHERE ONE BELIEVES THAT LAW IS CREATED TO BENEFIT THE GENERAL INTERESTS AND COMMON WELFARE.

4. THE NEW LAW DISORDERS THE APPLICATION OF THE EXLCADITION TREATY SIGNED BY COSTA RICA AND THE U.S. IN 1922, AND ACCORDING TO WHICH THE U.S. WOULD HAVE BEEN ABLE TO REQUEST THE EXTRADITION OF ROBERT VESCO. THIS OBJECTIVE IS THE KEY TO THE REFORM.

5. IT IS CERTAIN THAT THE REFORMS TO THE EXTRADITION LAW CANNOT DEROGATE THE EXISTING TREATY. HOWEVER, THESE (REFORMS) CAN BE APPLIED TOGETHER WITH THE TREATY TO A PENDING OR FUTURE CASE. IN EFFECT, THE TREATY DOES NOT STIPULATE WHO DECIDES ABOUT EXTRADITION NOR DOES IT STIPULATE ALL THE PROCEDURES OR CRITERIA WHICH MUST BE USED TO INTERPRET THE CONCEPTS THAT THE TREATY ESTABLISHES.

6. THIS EFFECT IS OBTAINED THROUGH ARTICLE 6 OF THE REFORM AND READS AS FOLLOWS: BEGIN INNER QUOTE THE AUTHORITY TO REQUEST, CONCEDE, OR DENY EXTRADITION CORRESPONDS TO THE JUDICIAL BRANCH, BUT THE DECISIONS IT TAKES WILL BE MADE KNOWN TO THE FOREIGN STATE THROUGH THE EXECUTIVE BRANCH. (BEGIN UNDERLINE) HOWEVER, WHEN IN THE REQUESTING STATE THE EXECUTIVE BRANCH CAN DEFINITELY DENY AN EXTRADITION, THE SQME AUTHORITY WILL REST WITH THE EXECUTIVE BRANCH OF COSTA RICA. (END UNDERLINE) END INNER QUOTE ("LA REPUBLICA'S" UNDERLINING.)

7. IN THE U.S., THE DECISION TO EXTRADITE FALLS TO THE JUDICIAL BRANCH, (BEGIN UNDERLINE.) BUT THE EXECUTIVE BRANCH HAS THE RIGHT TO VETO THE DECISION TO EXTRADITE. (END UNDERLINE.) THEREFORE, IN THE U.S. SYSTEM THE (BEGIN UNDERLINE, BEGIN CONFIDENTIAL

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INNER QUOTE) (END UNDERLINE, END INNER QUOTE)  
DECISION OF DEFINITELY DENYING AN EXTRADITION BELONGS TO THE EXECUTIVE BRANCH.

8. IF THE U.S. AGAIN REQUESTS THE EXTRADITION OF VESCO, IT WOULD FALL TO THE EXECUTIVE BRANCH IN COSTA RICA--THAT IS TO FIGUERES HIMSELF OR THROUGH ODUBER--TO DECIDE IN THE FINAL INSTANCE AND WITHOUT ANY RECOURSE IF THEY WOULD

EXTRADITE VESCO OR NOT.

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PM-07 H-03 INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01

SPC-03 SS-20 USIA-15 SEC-03 DRC-01 /096 W  
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R 292355Z MAR 74

FM AMEMBASSY SAN JOSE  
TO SECSTATE WASHDC 6641

C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 1246

9. ONCE THIS DOOR IS OPENED, THE REFORMS TO THE LAW PLACE  
IN THE HANDS OF THE EXECUTIVE A VARIETY OF MEANS TO JUSTIFY  
THE DENIAL OF EXTRADITION; IN FACT, THE ENTIRE LAW IS  
ADAPTED TO VESCO'S PERSONAL SITUATION. TO GIVE ONLY A  
FEW EXAMPLES: (A) EXTRADITION IS NOT OFFERED, ACCORDING TO  
THE REFORM, WHEN THE PERSON SOUGHT IS COSTA RICAN OR  
BEGIN INNER QUOTE ...SUBJECT TO RIGHTS RESERVED FOR NATIONALS  
UNDER THE POLITICAL CONSTITUTION OR SPECIAL LAWS END INNER QUOTE  
--VESCO, WHO IS LIVING HERE UNDER THE PENSIONADO SYSTEM, HAS A  
COSTA RICAN PASSPORT; (B) EXTRADITION IS NOT OFFERED WHEN,  
ACCORDING TO COSTA RICAN LEGISLATION, OR THAT OF THE REQUESTING  
STATE BEGIN INNER QUOTE THE PENALTY DOES NOT DEPRIVE LIBERTY OR  
WHEN (THE DEPRIVATION OF LIBERTY) IS LESS THAN ONE YEAR (BEGIN  
UNDERLINE) OR REGARDLESS OF ITS (IMPRISONMENT) DURATION, THE  
POSSIBILITY OF A FINE IS CONTEMPLATED.(END UNDERLINE). END INNER  
QUOTE. AND THE E-CALLED (BEGIN UNDERLINE.) BEGIN INNERQUOTE  
FRAUD-BY-WIRE, END INNER QUOTE A CRIME FOR WHICH THE U.S.  
REQUESTED EXTRADITION IN THE BAHAMAS AND FOR WHICH VESCO COULD  
BE SOUGHT IN OUR COUNTRY, COMBINES A PRISON SENTENCE AND THE  
POSSIBILITY OF A FINE (TITLE 18, NOSD. 1342 AND 1343 OF THE U.S.  
PENAL CODE); (END UNDERLINE.) (C) ACCORDING TO ARTICLE 4 OF THE  
NEW EXTRADITION LAW, REQUEST FOR EXTRADITION IS NOT ADMISSIBLE  
WHEN IT IS BASED ON DEEDS OR CRIMES BEGIN INNER QUOTE  
(BEGIN UNDERLINE.) ...PERFORMED IN THE CLAIMING STATE BEFORE  
THE PREVIOUS REQUEST FOR EXTRADITION. END INNER QUOTE

(END UNDERLINE.) THIS IS PRECISELY VESCO'S CASE SINCE THE  
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PENDING ACCUSATIONS AGAINST HIM ARE DEEDS COMMITTED IN THE  
U.S. PREVIOUS TO JULY 1973, THE DATE WHEN THE U.S. PRESENTED  
TO OUR COUNTRY ITS PETITION FOR HIS EXTRADITION, WHICH FAILED;  
(D) THE REFORM OF THE LAW PLACES CRITERIA, OBLIGATORY OR NOT,  
IN THE HANDS OF THE EXECUTIVE FOR INTERPRETING THE  
EXISTING AGREEMENTS, THAT ARE EVIDENTLY AIMED AT JUSTIFYING  
THE DENIAL OF EXTRADITION; I.E., THE AGREEMENTS OR TREATIES OF  
EXTRADITION WILL BE APPLIED ONLY BEGIN INNER QUOTE INsofar  
AS POSSIBLE END INNER QUOTE; WITH REFERENCE TO  
TERMINOLOGY AND PROCEDURES (IN THE TEXTS) OR WHEN (THE TEXTS)  
DO NOT DECIDE, THE NEW LAW WILL BE APPLIED (ARTICLE 1);  
EXTRADITION CANNOT PROCEED WHEN THE PERSONS SOUGHT MIGHT BE  
JUDGED WITH (BEGIN UNDERLINE.) PARTIALITY (END UNDERLINE.)  
(ARTICLE 2, CLAUSE 8) OR WHEN THE PERSON SOUGHT FOR A COMMON  
CRIME IS... IN A PUBLIC AND NOTORIOUS FORM, A VICTIM OF  
PERSECUTION FOR POLITICAL MOTIVES OR OF POLITICAL CHARACTER  
(ARTICLE 2, CLAUSE 9); REMEMBER THAT VESCO IN THE BAHAMAS  
ALLEGED HE WAS BEING POLITICALLY PERSECUTED; ONE CANNOT  
INVOKE FOR THE PURPOSES OF EXTRADITION DEEDS OR CRIMES  
CONTEMPLATED IN (BEGIN UNDERLINE.) AN EARLIER REQUEST FOR  
EXTRADITION (END UNDERLINE.) OR DEEDS OR CRIMES CONNECTED OR  
RELATED TO THEM (ARTICLE 4, CLAUSE 1); THAT WHICH IS BEGIN  
INNER QYOTE CONNECTED END INNER QTE OR BEGIN BEGIN QTE-  
RELATED INNER QTE WITH THE EARLIER REQUEST FOR EXTRADITION OR  
WITH THOSE FACTS ON WHICH IT IS BASED REMAINS IN THE HANDS OF  
THE EXECUTIVE BRANCH; (E) FINALLY, THE REFORM OF THE  
EXTRADITION LAW MULTIPLIES THE OBSTACLES TO PRESENTING THE  
ACCUSATION OR PETITION OF EXTRADITION (FOR EXAMPLE: ARTICLE 9,  
CLAUSES 7 AND 8, AND ARTICLE 13), REINFORCE THE POSSIBILITY  
THAT A REQUESTED CRIMINAL CAN ESCAPE (ARTICLE 10, CLAUSE 8,  
FOR EXAMPLE) AND IN GENERAL WILL MAKE IMPOSSIBLE ANY  
FUTURE EXTRADITION REQUESTS THAT MIGHT BE PROPOSED.

10. SINCE THE MOTIVES, PURPOSE, AND THE EFFECTS OF THE  
LAW ARE CLEAR, IT IS NOT EVEN NECESSARY TO DEMONSTRATE THAT THE  
LAW CONTRADICTS TOTALLY THE MODERN DOCTRINE ON THIS  
SUBJECT. THE REFORM CAN BE LAW, IN A FORMAL SENSE.  
MATERIALLY, IT IS NOT: IT IS SIMPLY AN ARBITRARY ACT OF ABUSE  
OF POWER WHICH HAS AS ITS MOTIVE THE FAVORING OF A  
FUGITIVE FROM JUSTICE WHO, BEING A MILLIONAIRE, IS A  
PERSONAL FRIEND AND A PARTNER OF THE PRESIDENT.  
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(END UNCLASSIFIED.) END QUOTE

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## Message Attributes

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